

**REMARKS****DISCUSSION OF SPECIFICATION**

The disclosure is objected to because of the following informalities: the date supplied for the provisional application 60/046,610 on line 11 of page 1 is inconsistent with Patent Office records which indicate May 15, 1997. In response thereto, "May 14, 1997" has been replaced with --May 15, 1997-- in the section titled Cross-Reference to Related Applications.

**DISCUSSION OF CLAIMS**

In the Office Action, if claim 16 is found allowable, claim 17 will be objected to under 37 C.F.R. 1.75 as being a substantial duplicate thereof.

In the Office Action, claim 16 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the Office Action, claims 11-19 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 09/976,514.

In the Office Action, claims 1, 2, and 11 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Number 5,908,443 to Brewer et al...

In the Office Action, claims 3-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In the Office Action, claims 20 and 21 are allowed over the prior art of record.

In response thereto, claim 17 has been cancelled and claims 1-11 and 16 have been amended. Accordingly, claims 1-16 and 18-21 are now pending. Following is a discussion of the patentability of each of the pending claims.

Preliminary Matter

In response to the rejection of claims 11-19 under the judicially created doctrine of provisional obviousness-type double patenting, a terminal disclaimer in compliance with 37 CFR Section 1.321(c) and signed by the undersigned attorney is enclosed herewith that obviates the above provisional obviousness-type double patenting rejection. Also, an Associate Power of Attorney is filed herewith that makes the undersigned attorney of record in this application. Accordingly, withdrawal of the rejection of claims 11-19 is respectfully requested.

In response to the rejection of claim 16 under 35 U.S.C. §112, second paragraph, "5" has been replaced with --15-- on line 1. Accordingly, withdrawal of the rejection of claim 16 is respectfully requested.

Independent Claim 1

Claim 1 recites an implantable defibrillator having a shocking circuit comprising a set of capacitors and a switching circuitry connected to the capacitors and operative to selectively discharge the capacitors so as to generate a first phase of a defibrillation pulse waveform wherein the first phase of the waveform has at least three distinct voltage peaks.

The Brewer et al. reference does not disclose or suggest an implantable defibrillator having a shocking circuit and a switching circuitry to generate a first phase of a waveform having at least three distinct voltage peaks. The Brewer et al. reference discloses a method and apparatus for generating a waveform for use in externally defibrillating the heart of a patient (Figure 1a illustrates an external defibrillator).

Accordingly, it is respectfully submitted that claim 1 is in condition for allowance.

Dependent Claims 2-10

Claims 2-10 depend from claim 1 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 11

For at least the same reasons discussed above with regards to claim 1, it is respectfully submitted that claim 11 is in condition for allowance.

Dependent Claims 12-16, 18, and 19

Claims 12-16, 18, and 19 depend from claim 11 and are similarly patentable. Accordingly, it is respectfully submitted that these claims are in condition for allowance.

Independent Claim 20 and Dependent Claim 21

Claims 20 and 21 are allowed over the prior art of record.

**CONCLUSION**

In light of the above claim amendments and remarks, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is requested.

Respectfully submitted,

2/20/03

Date

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Enclosure – Terminal Disclaimer under 37 CFR 1.321(c)